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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,441	04/09/2004	David A. Brock	38484-076 (BYRK-23)	1340

23630 7590 02/22/2006

MCDERMOTT WILL & EMERY LLP  
ATTN: INTELLECTUAL PROPERTY DEPARTMENT DOCKETING  
28 STATE STREET  
BOSTON, MA 02109

EXAMINER

LEVKOVICH, NATALIA A

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/821,441

Applicant(s)

BROCK ET AL.

Examiner

Natalia Levkovich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-69 is/are pending in the application.  
4a) Of the above claim(s) 34-69 is/are withdrawn from consideration.  
5) ☒ Claim(s) 5-6, 16-20 and 24-29 is/are allowed.  
6) ☒ Claim(s) 1-4, 7-15, 21-23 and 30-33 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☒ Claim(s) 1-69 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendments dated 12/08/2005 have been acknowledged by the Examiner and entered.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.
3. Claims 1-4, 7-15, 21-23 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaeef (USP 6,239,445) in view of Chow (PGPUB 20020015667) and in view of Maisch (USP 3,998,145).  
See the appropriate paragraphs of the 08/23/2005 Office Action.

### ***Allowable Subject Matter***

4. Claims 5-6, 16-20, 24-29 are allowed over the cited prior art.  
See the appropriate paragraphs of the 08/23/2005 Office Action.

***Reasons For Allowable Subject Matter***

5. The prior art does not teach, or fairly suggest a tray assembly having an insert with locating members being a boss and an indent and a reagent cassette having the corresponding locating members as recited in claims 5-6.

The prior art does not teach, or fairly suggest a support tray and an insert having elongated guides comprising grooves and defining sinks in the elongated guides, as well as a tray having a compartment for receiving the insert while the compartment includes stops to improve the engagement between the insert and the tray as recited in claims 16-20 and 27-29.

The prior art does not teach, or fairly suggest a tray assembly including a cam surface for opening a door of the liquid sample as recited in claims 24-26.

***Response to Arguments***

6. Applicant's arguments filed on 11/23/2005 have been fully considered but they are not persuasive.

Applicant argues that Shaeef refers to physically coupling each of the liquid carriers 22 and 40 'without suggesting that they be of different shapes'. Examiner disagrees. As shown in Figures 3-5, liquid carriers 22 and 44 have different shapes.

Applicant argues that Shaeef does not teach the two 'different liquid-carrier-receiving surfaces' to be 'provided simultaneously on a single tray insert'. Examiner agrees with this statement. As was previously discussed, Shaeef, indeed, teaches a

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tray having a flat recess adapted to receive two types of liquid carriers (having different shapes – see above). Chow teaches a set of 'one-sided' adapters / inserts accommodating different types of sample carriers. Maisch teaches the usefulness of a single element (adapter), having two surfaces 'spaced apart' and adapted for different uses within a single appliance. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a single insert within the apparatus of Shaeef having a first surface adapted to receive a first type of liquid carrier and a second surface adapted to receive a second type of liquid carrier (the two surfaces being spaced apart) to enhance the effectiveness of the tray assembly by adding more universal utility to the apparatus of Shaeef, as taught by both Chow and Maisch.

As to the alleged hindsight, it must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based on upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, such a reconstruction is proper. *In re McLaughlin*, 443 F. 2d 1392; 170 USPQ 209 (CCPA 1971).

Applicant argues that the Maisch reference is a non-analogous art, and that, therefore, 'Maisch does not cure the deficiencies' of Shaeef and Chow. Examiner notes that the determination whether a reference belongs to a non-analogous art, must be made not only as a result of comparing the fields of endeavor, but also on the grounds of whether or not the reference is reasonably pertinent to a particular problem. *In re Wood*, 202 USPQ 171, 174.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700